ATTACHMENT A

PORTIONS OF AWARD THAT SHOULD BE STRICKEN BY THE PANEL

- Page 2: "Bell Atlantic did not comply with this condition within the prescribed 15 months, which ended November 14, 1998."

- Page 3: "The purpose of the Settlement Agreement was to implement Condition 2 of the Memorandum Opinion and Order in the Bell Atlantic - NYNEX merger case . . ."

- Page 4: "It is fair to say that the basic purpose of the Settlement Agreement was to establish a process that included both individual actions on the part of each signatory and a collaborative process involving the three parties to the Settlement Agreement to achieve what the FCC had ordered to be accomplished by Bell Atlantic no later than November 14, 1998."

- Page 10: "It is important to set those facts in the perspective of a principal purpose of the Settlement Agreement -- the establishment of a collaborative process that would achieve the objective that the FCC in its Merger Order of August 14, 1997 had ruled should be achieved by November 14, 1998, i.e., Bell Atlantic shall have provided by that date uniform interfaces for CLECs to obtain access to its operation support systems."

- Page 11: "14-Nov-98 BA had not provided the required uniform interfaces by that date." (citing Settlement Agreement at 2)

- Footnote 17: "The Tribunal . . . notes, however, that in a sense [Bell Atlantic] had faced such a task since August 14, 1997 and that previous target dates had rarely been met. . . ." (citations omitted).

- Page 41: ". . . that the monetary penalty imposed will be the first such penalty that will have been imposed on Bell Atlantic with respect to non-performance by it of the obligation to provide uniform interfaces for MCI and AT&T to access its operations support systems, an obligation that originally was to mature November 14, 1998 . . ."

ATTACHMENT B

MCI WorldCom, Inc., and AT&T Corp.,	:	
Complainants,	:	
- against -	:	
	:	Arbitration Conducted
	:	Under the CPR Rules
Bell Atlantic Corporation,	:	
Respondent.	:	

REVISED

ARBITRATION ONE

FINAL AWARD

New York, New York
May _____, 2000

TABLE OF CONTENTS

Introduction

As of the end of September 1999, an arbitration tribunal composed of Messrs. von Mehren, Klick and Hixon (the "Arbitral Tribunal" or the "Tribunal") was formed pursuant to the Settlement Agreement of August 20, 1999 (the "Settlement Agreement") between the Complainants and the Respondent.[1] Under the Settlement Agreement the Arbitral Tribunal has jurisdiction over a broad area of activity and its life may extend to July 20, 2002 or longer. The Settlement Agreement provides for matters to be brought to the Tribunal when the Parties find themselves faced with disputes that they can not resolve themselves. These disputes may concern disputes over varied issues that have arisen at different times. Thus the Arbitral Tribunal may be called upon from time to time to hear and determine a number of discrete disputes.

The first such dispute is now before the Tribunal. After careful consideration, the Tribunal has decided to exercise its jurisdiction under the Settlement Agreement in the following manner. It will hear and determine each discrete dispute in a separate arbitration and arbitrations will be identified by the order in which they are heard and determined. Consequently, the instant Arbitration has been designated Arbitration One.

Treating each discrete dispute as a separate arbitration has several advantages. Among other things, it allows the Tribunal to issue a final award with respect to each discrete dispute and permits the Tribunal to develop a jurisprudence that should assist the

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1. See pp. 3-5, infra.

Parties in performing their obligations under the Settlement Agreement and the Tribunal in hearing and determining each discrete dispute as it arises.

The Tribunal's Final Award is divided into the following principal Chapters:

I. Historical Background
II. The Facts
III. Legal Analysis
IV. The Award

I. Historical Background

A. The FCC Litigation

This Arbitration has its origin in the successful effort of Bell Atlantic Corporation ("Bell Atlantic") to acquire NYNEX Corporation in 1997. As a qualification to its approval of the proposed merger, the Federal Communications Commission ("FCC") imposed certain conditions that would facilitate the entry of other carriers,[2] including AT&T and MCI WorldCom, Inc. ("MCI"), into the local markets served by the merged company so that these other carriers could compete with Bell Atlantic. One of the imposed conditions was that Bell Atlantic provide "uniform interfaces" for such competitors to access Bell Atlantic operations support systems ("OSS") no later than 15 months following the FCC's approval of the merger.[3]

2. These carriers are the Competitive Local Exchange Carriers ("CLEC").

3. For a fuller discussion, see Complainants' Post-Hearing Brief, p. 5.

In due course, in late June 1999, the Complainants filed a complaint with the FCC against Bell Atlantic. This matter, however, never came to hearing and was settled through the Settlement Agreement of August 20, 1999.

B. The Settlement Agreement

The Settlement Agreement[4] is of central importance to this Arbitration. It will be the subject of a detailed legal analysis later in this Award. See pp. 20-26, infra. It is important to the understanding of this Award, however, briefly to set forth the Agreement's central provisions now.

1. The purpose of the Settlement Agreement

Condition 2 of the Memorandum Opinion and Order in the Bell Atlantic - NYNEX merger case, 12 F.C.C.R. 19985 (1997) (the "Merger Order"), [5] required that "Bell Atlantic/NYNEX shall provide uniform interfaces for use by carriers purchasing interconnection to obtain access to operations support systems [by] ... all commercially reasonable efforts ... as soon as reasonably possible". It further specified that this requirement be fulfilled within certain time periods: (a) Where Alliance for Telecommunications Industry Solutions ("ATIS") standards apply, in no event later than 180 days after final adoption by ATIS and, where the ATIS standard was in place prior to the approval of the merger, no later than 180 days after approval of the standard or within

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4. AT&T introduced the Settlement Agreement into evidence as Exhibit KK.

5. See Preamble to Settlement Agreement.

150 days from the date of the approval of the merger, whichever is later; (b) where ATIS had not adopted industry standards, within 120 days following approval of the merger; and (c) with respect to carriers purchasing interconnection after approval of the merger, as soon as reasonably possible and in any event no later than 15 months following approval of the merger, i.e. by November 14, 1998.

On June 30, 1999, about 22 months following approval of the merger, the Complainants filed their complaint with the FCC alleging that "Bell Atlantic has not used all commercially reasonable efforts to implement uniform interfaces and did not do so prior to the November 14, 1998 deadline in Condition 2(c)".[6] It is fair to say that the basic purpose of the Settlement Agreement was to establish a process that included both individual actions on the part of each signatory and a collaborative process involving the three parties to the Settlement Agreement to achieve uniform interfaces and business rules.

Towards this end, the Settlement Agreement[7] set up elaborate procedures and set forth a number of contractual commitments.[8] It also contained a section on remedies.[9]

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6. Settlement Agreement, third Whereas Clause.

7. See Settlement Agreement, Sections 2-4.

8. See id., Sections 6-8.

9. See id., Section 9.

Needless to say, these aspects of the Settlement Agreement will be the subject of a detailed analysis later in this Award.[10]

2. Certain general provisions

The Settlement Agreement in Section 4.5 provides for the establishment of a panel of three independent arbitrators to oversee the collaborative process. One was to be chosen by the Complainants and one by the Respondent. The third arbitrator was to be chosen by the two-party appointed arbitrators. Section 5 contained certain procedures designed for disputes that require arbitration during the collaborative process. Section 10 set forth the enforcement powers of the Arbitral Tribunal and section 13.7 provided that this "Agreement shall be governed, in all respects, under the laws of the State of New York, irrespective of its choice of law rules".

II. The Arbitration

A. Preliminary Steps

The process of establishing the Arbitral Tribunal began by the appointment by the Complainants of:

Mr. John C. Klick
Klick, Kent & Allen
66 Canal Center Plaza
Suite 670
Alexandria, VA 22341

as their party-appointed arbitrator and the appointment by the Respondent of:

10. See pp. 30-36, infra.

Mr. Todd L. Hixon
Boston Consulting Group
Exchange Place - 31st Fl.
Boston, MA 02109

as its party-appointed arbitrator.

The Parties determined, however, not to use the appointment system specified in the Settlement Agreement and asked the CPR to appoint the third arbitrator. In late September 1999, the CPR appointed:

Robert B. von Mehren, Esq.
875 Third Avenue
New York, New York 10022
(Twenty-Fifth Floor)

who serves as Chairman of the Arbitral Tribunal.

The Parties are represented:

MCI - Jerome L. Epstein, Esq.
Jon M. Shepard, Esq.
Jenner & Block
601 Thirteenth Street, N.W.
Washington, DC 20005

AT&T - James F. Bendernagel, Esq.
Leslie A. Shubert, Esq.
Sidley & Austin
1722 Eye Street, N.W.
Washington, DC 20006

Frederick C. Pappalordo, Esq.
AT&T Corp.
Room 3136C2
295 North Maple Avenue
Basking Ridge, NJ 07920

Bell Atlantic - Catherine Kane Ronis, Esq.
Stephen P. Vaughn, Esq.
Skadden, Arps, Slate, Meagher & Flom, LLP
1440 New York Avenue, N.W.
Washington, DC 20005

Lydia R. Pulley, Esq.
Bell Atlantic Corporation
1320 North Courthouse Road
Arlington, VA 22201

An initial arbitration was scheduled for New York, New York for October 7, 1999. This arbitration was canceled on the evening of October 6, 1999 when the Parties resolved the issues in dispute by agreement. The first meeting between the Arbitral Tribunal and Counsel for the Parties took place in Washington, D.C. on October 19, 1999 and was concerned with matters of procedure and scheduling. At this meeting, it was agreed that the procedures provided for in the Settlement Agreement should not be strictly applied but would be amended as follows: the Parties would initially develop a description of the disputed issues and agree on a common statement of those issues. Briefing would then proceed with initial briefing being from Bell Atlantic followed by an answer from the Complainants and then a reply from Bell Atlantic.[11] The parties would exchange their briefs, as well as exhibits, witness statements and affidavits, expert reports, etc., prior to the hearings.

11. It should be noted that in Arbitration One this order was reversed because Complainants were the moving parties.

The second meeting between Counsel and the Tribunal consisted of a tutorial held on December 2, 1999 in Washington, D.C.[12] At this meeting, Counsel and various representatives of the Parties reviewed the technical matters and operational issues that are the subject matter of the collaborative process. This meeting was most helpful in providing background information to the Arbitral Tribunal.

An arbitration hearing had been scheduled for January 13-14, 2000. This hearing was adjourned to March 10, 2000. By letter from Counsel for AT&T to Counsel for Bell Atlantic, dated February 16, 2000, the former advised the latter that the March 10 hearing would be necessary and that it should "focus on Bell Atlantic's failure to make the February Release of LSOG 4 available on a timely basis".[13]

B. The March 10-12 Hearing

The hearing in Arbitration One took place on March 10-12, 2000 in Washington, D.C.[14] During the three days of hearings, the Arbitral Tribunal heard opening statements,

12. At several points in their submissions to the Tribunal, the Complainants refer to a tutorial held on November 30, 1999. See, for example, Complainants' Pre-Hearing Brief, p. 4. The correct date of the tutorial is December 2, 1999.

13. LSOG is defined as Local Service Ordering Guidelines, relating to pre-ordering and ordering.

14. The estimate that the hearing might be completed in one day proved to be totally unrealistic. Because of the urgency of the matter and problems of scheduling other hearing dates, the Arbitral Tribunal sat on Friday, March 10, Saturday, March 11 and Sunday, March 12 to hear all of the witnesses and to hear some argument on legal issues.

seven witnesses testified[15], hundreds of pages of documentation were received in evidence and, on March 12, oral argument was presented. The transcript of the hearing comprises 788 pages.

At the conclusion of the hearing, a schedule for post-hearing briefs was established. The schedule provided for sequential briefing, with initial briefs to be filed on March 22, followed by answering briefs on April 2, and final reply briefs on April 10. The Complainants were to file the initial brief on the issue of Bell Atlantic's having failed to fulfill it's obligations under the Settlement Agreement with respect to the February release of LSOG 4 and Bell Atlantic was to file the initial brief in support of its application to dismiss certain requests for relief made by Complainants. All Parties complied with the briefing schedule.

III. The Facts

The purpose of this section of the Award is to analyze and to describe the facts relating to Bell Atlantic's efforts to meet the requirements of the Settlement Agreement with respect to the February 4, 2000 LSOG 4 release.[16]

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15. The witnesses for AT&T were Raymond G. Crafton, Director Operation Systems, Negotiation and Testing; William Carmody, District Manager for the Bell Atlantic north territory, responsible for OSS negotiation; and Mason Fawzi, District Manager for the Bell Atlantic south territory, responsible for OSS negotiations.

    The witnesses for Bell Atlantic were Stuart J. Miller, Vice President within the network group; Jeffrey S. Bolster, Director of Wholesale Integration; Richard Michael Toothman, Director of CLEC communications; and Joanne B. Thetga, Senior Specialist (also known as CLEC Testing Manager).

16. The Tribunal wishes to call to the attention of Counsel that an evidentiary hearing was held on March 10 and 11, 2000 at which time witnesses testified and documentary evidence was received. It is that record upon which the Tribunal must rely in judging the conduct of the Parties and rendering its Award in this Arbitration. The Tribunal, therefore, informs Counsel that the facts that it will take into account are limited to those found in that record. In rendering this Award, it has given no weight at all to any assertions of fact made by Counsel for which they have not or can not provide substantiation from the record.

    To make its position abundantly clear, the Tribunal has selected two examples of the type of assertion that it has in mind. For example, in their Post-Hearing Brief, the Complainants assert that any monetary penalty "should begin on March 1, 2000" and "extend, at least, through April 7, 2000, which is the date that Bell Atlantic established in its response to KPMG's finding in Massachusetts for continued CLEC certification testing of the February release of LSOG4". However, AT&T Exhibit Y, Response to KPMG Exception Report No. 5, p. 2, par. 4 simply states that a CLEC "can continue to test the February LSOG4 release with Bell Atlantic in CTE until 4/7/00". This does not by any stretch of the imagination establish that the Complainants did in fact continue testing or the date when Bell Atlantic met its obligations under the Settlement Agreement.

    Likewise, the Tribunal has given no weight to assertions in the Post-Hearing Brief of Bell Atlantic that have no basis in the record. For example, the assertion that by "March 17, *all* of Bell Atlantic's 268 LSOG4 test deck transactions had passed the final validation milestone". (Italics in original) Id., p. 10.

    The Tribunal also wishes to state that a pattern of factual assertions unsupported by any citations to the record is of virtually no assistance to the Tribunal in fulfilling its duty of reaching a reasoned award. The best that the Tribunal can do is to ignore such assertions and itself determine the facts that are supported by the record.

    Arbitrations under the CPR Rules, like arbitrations in general, must afford due process to the contending parties. Due process requires that each party be advised of the evidence on which the other party is relying so that each has the opportunity to present rebuttal evidence and in the case of a witness, to cross-examine.

It is important to set those facts in the perspective of a principal purpose of the Settlement Agreement -- the establishment of a collaborative process that would achieve the objective of uniform interfaces and business rules.

A. The Chronology

The following chronology permits on overview of the efforts of Bell Atlantic to achieve the objective of uniform interfaces and is a helpful introduction to a more detailed discussion of the facts that are particularly relevant to this Arbitration.

14-Aug-97 FCC Order approving the Bell Atlantic-NYNEX ("BA") merger with conditions, including requirement that Bell Atlantic provide "uniform interfaces" for CLEC access to its OSS throughout the BA region no later than 15 months following merger approval. Complainants' Pre-Hearing Brief at p. 3.

14-Nov-98 End of 15-month time frame for compliance with merger conditions. Complainants' Pre-Hearing Brief at p. 3.

20-July-99 Date "CLEC Test Environment for New Releases and New Entrant Testing" (AT&T Exhibit A) published. BA's Brief in Support of its Motion to Dismiss Certain Requests for Relief Made by Complainants at p. 2.

20-Aug-99 Settlement Agreement between MCIWC/AT&T and BA, providing that by the date of March 1, 2000 BA would implement interfaces for pre-ordering, ordering and provisioning functions that included the uniform components that were agreed to by the parties in a collaborative, and that by July 1, 2000 BA would implement interfaces that were 100% uniform (subject to certain exceptions). Complainants' Pre-Hearing Brief at pp. 3-4. BA Pre-Hearing Brief at p. 4.

02-Dec-99 Tutorial for the Arbitration Panel.

24-Jan-00 CLEC testing of LSOG 4 originally scheduled to begin. Complainants' Pre-Hearing Brief at p. 5.

15 out of 92 LSOG 4 Pre-Order and 0 out of 176 LSOG 4 Order scenarios validated. AT&T Exhibit JJ.

27-Jan-00 43 out of 92 LSOG 4 Pre-Order and 0 out of 176 LSOG 4 Order scenarios validated. AT&T Exhibit JJ.

28-Jan-00 Letter from Mr. Bendernagel to Ms. Ronis expressing concern about unavailability of full LSOG 4 Test Deck. AT&T Exhibit D.

30-Jan-00 59 out of 92 LSOG 4 Pre-Order and 30 out of 176 LSOG 4 Order scenarios validated. AT&T Exhibit JJ.

02-Feb-00 Date on which CLEC testing of LSOG 4 required to commence in order to provide 4 weeks of CLEC testing prior to the 01-Mar-00 implementation date specified in the Settlement Agreement. BA Pre-Hearing Brief at p. 7.

Letter from Ms. Ronis to Mr. Bendernagel identifying status of Test Deck scenarios then available, and advising that Test Deck would remain available through 18-Mar-00. AT&T Exhibit B.

03-Feb-00 59 out of 92 LSOG 4 Pre-Order and 68 out of 176 LSOG 4 Order scenarios validated. AT&T Exhibit JJ.

04-Feb-00 Letter from Mr. Bendernagel to Ms. Ronis, advising that complete LSOG 4 Test Deck not available, and expressing concern about shortened test period and possible failure to meet 01-Mar-00 implementation. AT&T Exhibit E.

06-Feb-00 58 out of 92 LSOG 4 Pre-Order and 112 out of 176 LSOG 4 Order scenarios validated. AT&T Exhibit JJ.

09-Feb-00 62 out of 92 LSOG 4 Pre-Order and 138 out of 176 LSOG 4 Order scenarios validated. AT&T Exhibit JJ.

10-Feb-00 Letter from Ms. Ronis to Mr. Bendernagel advising the status of Test Deck transactions, that CLECs should still have time to test the release, and that BA intends to implement LSOG 4 by 01-Mar-00. AT&T Exhibit C.

State of New York Public Service Commission Order Directing Improvements to [BA's] Wholesale Service Performance. AT&T Exhibit R.

13-Feb-00 64 out of 92 LSOG 4 Pre-Order and 164 out of 176 LSOG 4 Order scenarios validated. AT&T Exhibit JJ.

KPMG Exceptions Report No. 6, finding that BA "does not provide an adequate carrier-to-carrier testing process or testing environment for its electronic data interchange (EDI) interface." AT&T Exhibit Z.

16-Feb-00 Letter from Mr. Bendernagel to Ms. Ronis identifying issues for arbitration. AT&T Exhibit H.

KPMG Exceptions Report No. 3 ("KPMG observed inadequate system availability of the new release CLEC testing environment during LSOG 4".); Report No. 4 ("A substantial portion of the documentation in the LSOG 4 Pre-Order and Order Business Rules and the EDI Pre-Order and Order Guides is incomplete, incorrect or unclear".); and Report No. 5 ("The quality of the results and frequent changes to the Bell Atlantic Massachusetts standard Quality Baseline Validation Test Deck indicates that it has not undergone proper Bell Atlantic internal quality assurance testing and standards".) AT&T Exhibit X.

17-Feb-00 53 out of 92 LSOG 4 Pre-Order and 125 out of 176 LSOG 4 Order scenarios validated. AT&T Exhibit JJ.

20-Feb-00 LSOG 4 release scheduled to be implemented.

24-Feb-00 91 out of 92 LSOG 4 Pre-Order and 140 out of 176 LSOG 4 Order scenarios validated. AT&T Exhibit JJ.

27-Feb-00 Change Control Notice advising CLECs that the production release of LSOG 4 will occur simultaneously with 01-Mar-00 implementation. AT&T Exhibit G.

29-Feb-00 92 out of 92 LSOG 4 Pre-Order and 111 out of 176 LSOG 4 Order scenarios validated. AT&T Exhibit JJ.

01-Mar-00 LSOG 4 implementation required under Settlement Agreement. CLEC production testing scheduled to begin. AT&T Exhibit GG.

07-Mar-00 92 out of 92 LSOG 4 Pre-Order and 120 out of 176 LSOG 4 Order scenarios validated. AT&T Exhibit JJ.

10-Mar-00 Arbitration Hearing commences.

12-Mar-00 Arbitration Hearing concludes.

26-Apr-00 Final Award issues.

B. Analysis of the Facts

The Tribunal holds in this award that the March 1, 2000 deadline is a strict requirement and not a best-efforts requirement. See pp. 35-36, infra. Thus, even if one assumes arguendo that Bell Atlantic used its best efforts, it has failed to fulfill its obligations under the Settlement Agreement, if it failed to make the February Release of LS0G4 available to the Complainants by March 1, 2000. Hence, the relevant facts with respect to Bell Atlantic's liability relate to whether or not it met this deadline.[17]

Section 7 of the Settlement Agreement describes how a new release under Section 6 of the Settlement Agreement is to be implemented. AT&T Exhibit KK, Sections 7.1, 7.2, 7.5 and 7.6. One of those requirements is that CLECs be provided with a four week period in which to test production ready code that has already gone through Quality Assurance testing by Bell Atlantic and is ready for production. AT&T Exhibit A, p.1, incorporated by reference in Section 7.2 of the Settlement Agreement. AT&T Exhibit A states that this CLEC test period begins after Bell Atlantic has completed its quality assurance testing, including the successful running of its Quality Baseline

17. The Tribunal accepts that Bell Atlantic faced, as Mr. Miller put it, a "monstrous task". March 10 transcript, pp. 327-28. The Tribunal takes the magnitude of Bell Atlantic's efforts into account in its award of monetary penalties. See pp. 41-42,

Validation Test Deck. Id., pp. 1-3. Finally, AT&T Exhibit A provides that Bell Atlantic will not make any changes to the CLEC Test Environment while CLECs are testing the release other than the fixing of defects uncovered during the CLEC test period on Wednesday evenings, with emergency fixes permitted at other times. Id., p. 4.

Bell Atlantic encountered significant problems in its testing of the LSOG 4 software. A substantial number of the Bell Atlantic Quality Baseline Validation Test Deck scenarios were not successfully validated on January 24, 2000 (the date CLEC testing had been scheduled to begin) or on February 2, 2000 (the date CLEC testing would have been required to start in order to provide four weeks of testing prior to the March 1 implementation date established as a "deadline" by the Settlement Agreement). See AT&T Exhibit JJ. This situation improved intermittently in February. On February 17, for example, Bell Atlantic reported that it had validated 53 of its 92 pre-order test deck scenarios and 125 of its 176 order test deck scenarios. Ibid. Similarly, on February 29, Bell Atlantic reported that 65 of its order test deck scenarios remained invalidated. Ibid. At the hearing, Bell Atlantic's witnesses were unable to state whether the problems preventing validation of its Quality Baseline Validation Test Deck were major or minor, or what changes had been made in the code to correct specific deficiencies. March 11 Transcript, pp. 247-49. It was not until six days after the hearing had ended that Bell

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infra.

Atlantic reported that it had validated 100 percent of its Quality Baseline Validation Test Deck. Bell Atlantic Post-Hearing Brief, p. 10.

Bell Atlantic asserts that its inability to validate its test deck does not mean that the LSOG 4 software was of poor quality, (Id., p. 10, fn. 17), that success does not require perfection (Id., p. 9), and that the Settlement Agreement does not require a 100% success rate (Id., p.12).

The evidence establishes that significant problems also were experienced by the CLECs during the testing of their test decks. Testing was interrupted on numerous occasions because of problems with the ECXpert system. March 11 Transcript, pp. 224-28; AT&T Exhibit N, pp. 1, 6, 9. CLEC test scenarios had to be run multiple times before they could be validated. March 10 Transcript, pp. 214-20; AT&T Exhibit HH. KPMG, which was acting as a third-party tester in several states, also was experiencing similar problems in connection with its testing of the February release of LSOG 4. Complainants' Post-Hearing Brief, pp. 20-21, n. 48.

Bell Atlantic states that as of March 1, 2000 only a single problem remained in validating the CLEC test decks (Bell Atlantic Post-Hearing Brief, p. 12). However, the evidence establishes that seven of the 23 test scenarios in Pennsylvania and four of the 24 test scenarios in Massachusetts were not validated as of March 1. Complainants' Post-Hearing Brief, p. 25. Seven of these invalidated scenarios involved supplemental orders, which all parties agree are important transactions for CLECs. March 10 Transcript, pp.

217-18, 234-35; March 11 Transcript, pp. 290-92. AT&T witness Camody testified that all of AT&T's LSOG 4 carrier-to-carrier testing scenarios for Massachusetts were validated by March 10, 2000. March 10 Transcript, p. 235. AT&T Witness Fawzi testified that 22 of 23 of AT&T's carrier-to-carrier LSOG 4 testing scenarios were validated by March 9, 2000. Id., p. 218. No evidence was submitted by any party concerning successful validation of AT&T carrier-to-carrier testing of LSOG 4 in other geographic regions.

AT&T and MCI argue that the Settlement Agreement requires a stable test environment during CLEC testing, and that Bell Atlantic failed to provide one. Complainants' Post-Hearing Reply Brief, pp. 14-15. As noted above, however, numerous Quality Baseline Validation Test Desk scenarios were not validated at the beginning of the CLEC test period (four weeks prior to implementation), and Bell Atlantic concedes that significant changes were made to the LSOG 4 software during the CLEC test period. March 11 Transcript, p. 314. Bell Atlantic's Mr. Miller stated that the quality of the LSOG 4 software was sacrificed to some extent in order to meet the March 1, 2000 implementation deadline set forth in the Settlement Agreement (March 11 Transcript, pp. 40-42) and that Bell Atlantic recognized that this could shorten the testing time available to CLECs. Id., p. 43.

In response, Bell Atlantic argues that the CLEC Test Environment was stable because (1) Bell Atlantic did not make changes to the code while CLEC testing was

actually underway (March 11 Transcript, pp.198-99) and (2) that a stable CLEC Test Environment could exist even if the LSOG 4 software did not work. Id., pp.196-98.

The parties also disagree over whether Bell Atlantic abided by Section 7.5 of the Settlement Agreement, which requires that Bell Atlantic shall include in its quality assurance test deck any reasonable CLEC requests for additional test accounts and scenarios. On November 18, 1999, AT&T submitted a request that Bell Atlantic add several scenarios to its Quality Baseline Validation Test Deck. AT&T Exhibit I. AT&T ranked each of the requested scenarios by priority. Id., Attachment. Bell Atlantic did not respond substantively to this request until January 7, 2000, when it advised AT&T that four of the AT&T-proposed scenarios had matches in Bell Atlantic's test desk and that 26 others were similar. AT&T Exhibit I. Bell Atlantic rejected 41 of AT&T's proposed test scenarios, 27 of which had been identified by AT&T as being of either high or medium priority. Ibid. Bell Atlantic never advised AT&T that the scenarios it had rejected were unreasonable. March 11 Transcript, p. 292. The evidence indicates that a number of the scenarios proposed by AT&T that Bell Atlantic rejected related to supplemental orders, which are heavily used by CLECs and which AT&T's testing subsequently revealed were a source of significant problems. March 10 Transcript, pp. 217-18; 234-35; March 11 Transcript, pp. 290-91. However, AT&T apparently never utilized the established escalation procedures in an effort to convince Bell Atlantic to add additional of its

proposed scenarios to the Bell Atlantic Quality Baseline Validation Test Deck. March 10 Transcript, pp. 270-73.

AT&T/MCI also allege that problems that Bell Atlantic is experiencing with the ECXpert system are relevant to the issues presently before the Panel. Complainants' Post-Hearing Reply Brief, pp. 19-21.[18] As noted earlier, the parties agree that failure of ECXpert disrupted CLEC testing during February. AT&T Exhibit N, pp. 1, 6, 6[?]; March 11 Transcript, pp. 224-28. Test orders also were lost as a result of these outages. Id. The CLECs argue that the existence of the ECXpert problem creates a dilemma for them, i.e., whether to expend resources now to conduct production testing using an interface that is likely to be replaced. The costs associated with production testing are not trivial. AT&T witness Crafton testified that AT&T is spending approximately $160,000 per week on its testing efforts in Pennsylvania and Massachusetts. March 10 Transcript, p. 96. More importantly, AT&T argues the deficiencies in ECXpert threaten its plans for future market entry. March 10 Transcript, pp.150-51.

Bell Atlantic responds that there is no link between the ECXpert system problems and the LSOG 4 implementation requirements set forth in the Settlement Agreement. Bell Atlantic Post-Hearing Brief, p. 32. It argues that AT&T and MCI have

18. According to Bell Atlantic, the ECXpert system is a component of the EDI process that is used to handle orders from the CLECs. March 11 Transcript, p. 356. ECXpert separates transactions from a batch file into discrete orders. Once orders have been processed by the back-end system and responses have been received from those systems, ECXpert can rebuild a batch file of these responses for return to the

known about problems with ECXpert since February, yet they made no mention of its potential effect on implementation (other than as a possible drain on Bell Atlantic's resources) in their Pre-Hearing Brief. Ibid. Bell Atlantic argues that ECXpert is a separate system that has no effect on either the nature of the LSOG 4 code or the business rules that apply to that code. Bell Atlantic Post-Hearing Brief, pp. 33-34. In short, Bell Atlantic argues that ECXpert does not affect Complainants' ability to test LSOG 4. Id., p. 34.

Witnesses for both parties seem to agree that the eventual implementation of a replacement for ECXpert has a relatively low probability (20% to 30%) of creating negative effects in downstream OSS systems, although both parties also appear to agree that if such a problem *did* occur, it would have very significant negative effects on CLECs. March 11 Transcript, pp. 355-71.

IV Legal Analysis

The Chronology sets forth in historical sequence the significant events that led to this Arbitration. The Analysis of Facts presents the facts as to the compliance by the Parties with the Settlement Agreement. Combined they supply the factual matrix within which the Tribunal must apply its interpretation of the legal obligations of the Parties in order to resolve the present dispute. Hence, the Tribunal turns now to the issues that involve legal analysis.

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initiating CLEC. Id., pp. 356-57.

A. The Settlement Agreement

The obligation of the Parties with respect to the matters at issue in Arbitration One are found in the Settlement Agreement and in a document entitled CLEC Test Environment for New Releases and New Entrant Testing, dated July 20, 1999 and effective September 1999. [19] This document is incorporated into the Settlement Agreement through Section 7.2. Some portions of the Settlement Agreement were analyzed at pp.3-5 , supra. The following discussion will consider in depth the substantive provisions not treated in the prior analysis.

3 Analysis of certain sections

Section 1: This section provides for the dismissal of the Complainants' FCC Complaint and the release of Bell Atlantic "from any and all past and present claims [etc.] . . . of any kind, whether arising under federal or local law, for damages, injunctive relief, declaratory relief, attorneys' fees, costs, or any other relief in any way relating to alleged non-compliance with the requirement of Condition Number 2(c) of the Merger Order to provide uniform application-to-application interfaces". It also provides that the only mechanism through which the Complainants may enforce "during the term of this Agreement . . . the requirement of Condition Number 2(c)" is arbitration under the Settlement Agreement.[20]

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19. This document is AT&A Exhibit A.

20. Section 1.2 contains a caveat allowing enforcement through judicial and regulatory proceedings when Complainants are "ordered by a court or a regulatory agency to do

Section 2: This section sets forth the general obligations of Bell Atlantic "to implement uniform, application-to-application interfaces across its current thirteen state region and the District of Columbia that provide access to Bell Atlantic's Operations Support Systems ('OSS') supporting the functions of pre-ordering, ordering, provisioning, repair and maintenance, and billing for resold services, and unbundled network elements . . .". The interfaces must be the same interfaces throughout the Bell Atlantic region so that a CLEC can use such interfaces to perform each of the five OSS functions in all of the thirteen Bell Atlantic states and the District of Columbia.[21]

Section 3: This section deals with the process to be followed in setting up the collaborative process. It is not material to the matters presently before the Arbitral Tribunal.

Section 4: This section requires that the collaborative process "shall commence no later than September 23, 1999" and states how the process shall be organized and operate.

It also provides in Section 4.3 that:

> *The collaboratives shall first address the February 2000 LSOG 4 release. These issues will be resolved no later than*

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so".

21. Section 2.2 contains certain exceptions to the uniformity requirements set forth in Section 2.1. These exceptions are not material to the issues now before the Arbitral Tribunal. Moreover, the provisions of Sections 2.3-2.7, inclusive, are not involved in Arbitration One.